

Sec. 47-24.12. – Variances, special exceptions and interpretation of Unified Land Development Regulations.

A. *Variance, special exception ~~(board of adjustment)~~.*

1. *Applicant.* The property owner of record who wishes to develop his property not in compliance with the requirements of the ULDR.

2. *Application.*

...

3. *Review process.*

a. *Variance, special exception and interpretation of ULDR review process.*
The variance special exception and interpretation of ULDR review process shall be as follows:

~~a.i.~~ An application shall be submitted to the department on forms promulgated by the department.

~~b.ii.~~ Consideration of an application shall not be heard sooner than twenty (20) days from the date of submission of a complete application together with supporting materials thereto as required by the department.

~~c.iii.~~ The board of adjustment shall consider the application and the evidence adduced in support of and in opposition to the application at a public hearing and may receive public comment thereon.

~~d.iv.~~ The burden shall be upon the applicant to demonstrate by a preponderance of the evidence that the application meets the criteria specified in the ULDR. If the board of adjustment determines that the proposed application for a temporary nonconforming use permit, variance or special exception meets the criteria specified herein, the board of adjustment shall approve the application by entering a final order granting such relief and imposing such conditions or safeguards as are appropriate under the ULDR. The final order granting a variance or special exception shall include a time period, not to exceed one hundred eighty (180) days, within which a building permit shall be secured to implement the improvements authorized by the variance or special exception as granted. The variance or special exception shall expire if the building permit to implement the improvements authorized by the variance or special exception is not secured within the time frame specified in the final order. Violation of any other condition of a final

order granting a temporary nonconforming use permit, variance or special exception shall be a violation of the ULDR. In granting a variance or special exception, the board may proscribe appropriate conditions and safeguards as are in their opinion necessary to protect the public interest and ensure harmony with the purposes and intent of the ULDR.

e.v. If the board of adjustment determines that the applicant failed to meet the burden of demonstrating by a preponderance of the evidence that the application meets the criteria specified in the ULDR, the board of adjustment shall enter a final order denying the application.

f.vi. The board of adjustment shall not be required to make findings of fact in the entry of any final order.

b.

Administrative variance review process. For an existing single family residential dwelling or an existing accessory structure to an existing single family residential dwelling, the zoning administrator or designee may either approve, approve with conditions, or deny an application for a variance from the minimum or maximum dimensional requirements for yards, setbacks, or height specified in the ULDR that do not exceed twenty-five (25) percent or three (3) feet of the applicable ULDR dimensional requirement, whichever is less. Such variance requests are administrative variances for the purposes of the ULDR. The administrative variance process is not available or applicable to new construction or additions to existing structures. The administrative variance shall be reviewed as follows:

- i. An application for an administrative variance shall be submitted to the department for review to determine whether the request meets the criteria for an administrative variance.
- ii. Within thirty (30) business days of receipt of a complete application, the zoning administrator or his or her designee shall provide a decision regarding compliance with the criteria.
- iii. If the zoning administrator or his or her designee determines that the requested relief meets the criteria, the zoning administrator or his or her designee shall approve or approve with conditions the administrative variance.
- iv. If the zoning administrator or his or her designee determines that the request does not meet the criteria, the zoning administrator or his or her designee shall deny the administrative variance.

- v. Mail notice shall be sent to the adjacent property owners of the subject property notifying them of the receipt of an application for administrative variance. Such notice shall be sent by the City, at the applicant's expense. Notification shall be sent out within ten (10) days of the application being deemed complete. Failure to receive notice shall not be grounds to invalidate the review and decision on the administrative variance application as this provision is directory and not mandatory.
- vi. If an adjacent property owner opposes the administrative variance being sought, then the zoning administrator or his or her designee will automatically forward the application to the Board of Adjustment for their review of the variance. Such opposition shall be in writing and submitted to the department within seven (7) business days of receiving the mail notice.
- vii. If the zoning administrator or his or her designee denies an administrative variance request, the applicant may file an application for a de novo hearing before the board of adjustment within thirty (30) days of denial. Such application shall be processed as a new variance application and subject to the variance review process provided in Section 47-24.12.A.3.a.

...

- 4. *Criteria—Variance.* A variance from the terms of the ULDR shall be granted only upon demonstrating a unique hardship attributable to the land by proving by a preponderance of the evidence all of the following criteria:
 - a. That special conditions and circumstances affect the property at issue which prevent the reasonable use of such property; and
 - b. That the circumstances which cause the special conditions are peculiar to the property at issue, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the same zoning district; and

...

- f. *Supplemental criteria for administrative variances.* In addition to other criteria for variances in this section, a variance from the terms of the ULDR shall be granted only upon demonstrating, in addition to a unique hardship attributable to the land by proving by a preponderance of the evidence, all of the following criteria:

- i. The variance is from the minimum or maximum dimensional requirements for yards, setbacks, or height specified in the ULDR for an existing single family residential dwelling or an existing accessory structure to an existing single family residential dwelling;
- ii. The requesting variance from the minimum or maximum dimensional requirements for yards, setbacks, or height specified in the ULDR does not exceed twenty-five (25) percent or three (3) feet of the ULDR dimensional requirement, whichever is less;
- iii. A valid building permit and a certificate of occupancy was issued for the existing single family residential dwelling located on the property subject to the variance request; and
- iv. The existing accessory structure that is the subject of the variance request was issued a valid building permit and a final inspection was completed.

...